



## STATE BOARD OF LAND COMMISSIONERS

Dirk Kempthorne, Governor and President of the Board

Pete T. Cenarrusa, Secretary of State

Alan G. Lance, Attorney General

J. D. Williams, State Controller

Marilyn Howard, Superintendent of Public Instruction

Winston A Wiggins, Secretary to the Board

### Final Minutes Regular Land Board Meeting August 7, 2001

The regular meeting of the Idaho State Board of Land Commissioners was held on Tuesday, August 7, 2001 in Boise, Idaho. The following members were present:

Honorable Secretary of State Pete T. Cenarrusa

Honorable Attorney General Alan G. Lance

Honorable State Controller J. D. Williams

Honorable Superintendent of Public Instruction Marilyn Howard

Secretary to the Board Winston A Wiggins

Governor Kempthorne was attending the annual National Governors Association meeting in Providence, Rhode Island. Acting Governor Riggs presided over the Land Board meeting and the meeting began at 9:15 a.m.

#### • **CONSENT AGENDA**

**Director Wiggins provided background information on the Consent Agenda items.**

**A motion was made by Attorney General Lance to approve the Consent Agenda in its entirety. Secretary of State Cenarrusa seconded the motion. The motion carried on a vote of 5-0.**

#### **1. Director's Report – approved**

- A. Bureau of Minerals Official Transactions – June 2001
- B. Timber Sale Official Transactions – June 21, 2001 through July 20, 2001
- C. Bureau of Real Estate, Land Sale Section, Official Transactions – June 2001
- D. Bureau of Real Estate, Easement Section, Official Transactions – June 2001
- E. Bureau of Range Management and Surface Leasing Official Transactions – July 2001
- F. Timber Sale Activity Report
- G. Department of Lands Financial Summary – June 2001
- H. Fire Report

*Fire Report Discussion:* Director Wiggins provided a fire season summary. Estimated expenditures total \$1.3 million in deficiency warrants. On July 10, 2001 an air tanker went down on a fire. The FAA is still investigating the cause of the accident. IDL is assisting in that investigation. Another plane owned by the same company went down the following Friday on a different operation, unrelated to fire. Both pilots were killed. There does not appear to be a connection between the two accidents.

**2. Timber Sales** – Staffed by Bob Helmer, Acting Chief, Bureau of Forest Management – **approved**

A. CR-3-0442	Confusion Creek	5010 MBF
B. CR-3-0474	Dark and Dense	4820 MBF
C. CR-4-0-728	Oro-Copter	3545 MBF
D. CR-4-0730	Maggie's Poles	1600 MBF / 5450 PCS
E. CR-6-0149	Wet Gulch Relog	2800 MBF

**3. Application for Qualified Bidders List, Timber Sales** – Staffed by Bob Helmer, Acting Chief, Bureau of Forest Management – **approved**

- A. Douglas Construction & Custom Cutting, Inc., Post Office Box 1143, Priest River, ID 83856
- B. Don Korell Logging, 3011 Tom's Cabin Road, Emmett, ID 83617

*DEPARTMENT RECOMMENDATION:* That the above applications for addition to the qualified bidders list be approved.

*BOARD ACTION:* Approved.

**4. Timber License Plate Fee Recommendations** –Staffed by Betty Munis, Idaho Forest Products Commission – **approved**

*DEPARTMENT RECOMMENDATION:* That the board approve the proposed educational project, Interactive Forest Management CD-ROM.

*DISCUSSION:* Dr. Howard expressed hope that this project would not take away a student's chance to make critical kinds of decisions. She feels students need to recognize that there are various points of view in the world and that part of their job as adults will be to take into account information and to try to make good judgments based on that information.

Betty Munis, Director, Idaho Forest Products Commission, stated that this project allows an individual to make choices and to see that there are consequences attached to those choices. The project is a great learning tool that provides an opportunity to actually be on the ground in areas where many students in the state can not go and can not see. It also gives the student an opportunity to make decisions using the expertise of professionals on the ground.

Acting Governor Riggs commented that anytime information is provided to the students of Idaho the information should be presented in a balanced and fair format, whatever the topic.

*BOARD ACTION:* Approved.

**5. Request for Approval – Disclaimer of Interest to Boise Cascade Corporation on 3.305 Acres of Accretion Land Adjacent to the Payette River in Boise County at Horseshoe Bend** – Staffed by Perry Whittaker, Chief, Bureau of Real Estate – **approved**

*DEPARTMENT RECOMMENDATION:* It is recommended that a disclaimer of interest be issued for parcels of accretion land totaling 3.305 acres of the former bed of the Payette River. This disclaimer of interest will be issued contingent upon the applicant granting to the State of Idaho a disclaimer of interest for 0.71 of an acre of current riverbed. Also, the applicant will grant a 25.00 foot wide unimproved pedestrian easement for nearly one-half (½) mile along the ordinary high water mark of the right (west) boundary of the Payette River. The recommended fee is \$600.00.

*DISCUSSION:* Director Wiggins commented that the Horseshoe Bend Hydro Company brought the department's attention to an easement issued by the department a number of years ago. The easement covers a portion of this land. The state has no claim and it is the department's belief, and based on legal counsel review, that the easement was inappropriately issued. The department is working to adjust the easement. Granting this disclaimer would not impact the situation.

Attorney General Lance commented that periodically the board considers disclaimers on accreted land, which is according to law and is appropriate. The state probably has some lands it has picked up in certain instances. He asked if the department has any systematic approach to quieting title to accreted lands on behalf of the endowed lands. Director Wiggins remarked that in the case of a quiet title, the state gives up some land and picks up other small parcels. Assistant Director Biladeau stated that the department does not have a systematic approach. The department deals with each individual on a case-by-case basis. If there are lands that the department believes have become state, the department deals with those lands at that time. The department does not go out seeking those lands unless there is something that draws attention to it, such as someone requesting a disclaimer or some other activity.

*BOARD ACTION:* Approved.

- 6. Request for Approval – Disclaimer of Interest to Gabica Farms, Inc., on 6.073 Acres of Accretion Land Adjacent to the Boise River in Canyon County** – *Staffed by Perry Whittaker, Chief, Bureau of Real Estate* – **approved**

*DEPARTMENT RECOMMENDATION:* It is recommended that a disclaimer of interest be issued for this parcel of accretion land totaling 6.073 acres. The recommended fee is \$600.00.

*BOARD ACTION:* Approved.

- 7. Request for Approval – Disclaimer of Interest to Northside Properties on 2.934 Acres of Accretion Land Adjacent to the Boise River in Ada County** – *Staffed by Perry Whittaker, Chief, Bureau of Real Estate* – **approved**

*DEPARTMENT RECOMMENDATION:* It is recommended that a disclaimer of interest be issued for this parcel of accretion land totaling 2.934 acres. In exchange, the applicant will issue a disclaimer of interest to the State of Idaho for 0.173 of an acre where the applicant's property touches the current riverbed. This same point is adjacent to a public access easement and will insure public access to the river. The recommended fee is \$600.00.

*BOARD ACTION:* Approved.

- 8. Addition of Name to Cottage Site Lessee Exchange List for Payette Lake** – *Staffed by Perry Whittaker, Chief, Bureau of Real Estate* – **approved**

A. Charles R. King, Jr.

*DEPARTMENT RECOMMENDATION:* Department staff request Land Board approval to add the above name to the Payette Non-Lakefront Cottage Site Exchange List.

*BOARD ACTION:* Approved.

- 9. Minutes – July 10, 2001 – approved**

- **REGULAR AGENDA**

**10. Endowment Fund Investment Board Manager's Report** – *Presented by Charles G. Saums, Manager of Investments with a Special Presentation by Bob Maynard, Citizens' Evaluation Committee*

Controller Williams stated that the board has been working to develop a one-page summary of monthly financial activities. Keith Johnson, Chief Deputy, State Controller's office, presented a report format summary. Bob Maynard presented a review of the investment and performance forms. Controller Williams stated that the board's goal would be to have information provided every quarter on the performance of the actual fund.

The EFIB Manager's Report is provided monthly for the board's information. No action was taken on this agenda item.

**11. Rules Governing Grazing Leases and Cropland Leases** – *Presented by Tracy Behrens, Range Management Specialist*

*DEPARTMENT RECOMMENDATION:* That the board accept the department recommendation for modification of IDAPA 20.03.14, Rules Governing Grazing Leases and Cropland Leases, and direct the department to submit the proposed rule revision to the Department of Administration for processing.

*DISCUSSION:* Attorney General Lance asked for clarification of the submission date for the rules. Mr. Behrens stated in order to meet the legislative deadline to have the rules reviewed in the upcoming 2002 legislative session, the rules have to be published in the fall 2001 Administrative Bulletin. The last date to meet that deadline is August 22, 2001.

Attorney General Lance stated that, in spite of the fact he has some questions, he intended to move for the adoption of the rules. However, for future reference he feels that the board needs to take a very close look at the rules and will need more lead time to do so. As an example, cropland leases basically provide for a monetary payment. But, if the farmer suffers a loss, the amount of the lease payment can be reduced. Attorney General Lance stated he does not believe leases work that way in the real world. He feels state leases should parallel the real world as much as possible, but he was not prepared to delay the proposed rules for that, or any other, reason.

Also, Attorney General Lance stated that the minutes should clearly reflect that the environmental community was invited to participate in this process and declined.

Secretary of State Cenarrusa asked about a provision in the proposed rules changing the policy of tenure for grazing leases on lands acquired from the federal government. The policy dealt with land exchanges between the Bureau of Land Management and the department. Mr. Behrens responded that this matter was addressed in a Memorandum of Agreement between the Department of Lands, the Bureau of Land Management and the Forest Service. That Memorandum of Agreement is still in effect and is honored by the department.

Dr. Howard noted concerns expressed about the ability to apply for a reclassification. Mr. Behrens stated questions were raised about the reclassification issue. In particular, Western Watersheds Project and the Committee for Idaho's High Desert suggested that the rules should be broadened to incorporate management of leases for other than grazing and cropland. The department responded to those concerns in writing stating that the proposed rules are designed specifically for addressing management of cropland and grazing and that the rules provide a provision and a process to follow for requesting reclassification. The rules reflect a policy that the Land Board adopted in March 2001 that identified procedures for requesting reclassification for uses other than the current primary designated use, which in this case is cropland or grazing. The rules provide a section that addresses

the process that would be followed. A request must be submitted in writing. The requestor needs to document how the proposed improved use would benefit the beneficiaries. This process allows the director to make the initial decision. The director's decision is appealable to the Land Board for further consideration.

Dr. Howard asked if a lease could be applied for under various titles, such as for a process to be started for reclassification or for a grazing lease. Mr. Behrens stated that the provision allowed the request for reclassification to be made at any time during the lease period. The request does not have to wait until the current lease expires. If someone is proposing an alternative use that would provide more income to the endowment, a request could be made at any time during the ten-year lease term.

Director Wiggins stated that the rules are written so that an individual who wants to use the land for some other use, other than grazing or cropland, is not allowed to directly conflict a lease application. The rules set up two different processes. If two people intend to use the land for the designated purpose that situation would follow the current conflict application and bid process. However, if an individual intends to use the lease for other than the designated primary use, the rules provide a procedure that sends the application through a separate process. That separate process would identify the land and would establish a proposal to the department and to the board to change the primary use of the land to some other use.

Secretary of State Cenarrusa asked if this motion is approved, would the matter come back before the board. Director Wiggins stated that it would not at this point. The department is asking the board to give their final approval so the proposed rules can enter the administrative rulemaking process. Secretary of State Cenarrusa commented that he wondered why there was such little interest. He asked if the rules were well advertised for comments. Director Wiggins pointed out that Idaho Cattlemen's Association and Idaho Wool Growers were represented at the advertised Idaho Falls and Boise public comment meetings.

Acting Governor Riggs noted for the record that the department received a number of comment letters. Letters were received from Western Watersheds Project, Committee for Idaho's High Desert, Fish and Game, Idaho Cattle Association, Idaho Farm Bureau and Highland Livestock.

Dr. Howard asked whom people would contact if they have continued comments on the rules. Mr. Behrens stated that once the proposed rules are published in the Administrative Bulletin, the rules would go before the Idaho Legislature for approval. The public can express concerns to their legislative representative. The department has been in fairly constant contact with the Idaho Cattlemen's Association, Idaho Wool Growers and various other lessees and interested parties. Mr. Behrens feels confident that the department has satisfactorily addressed the majority of concerns and that these parties are comfortable with the proposed rules. If other individuals have concerns, once the rules are published those concerns can be expressed to their legislative representatives to be addressed during the upcoming winter legislative session.

Acting Governor Riggs commented his sense is that there has been considerable discussion on this matter and board approval is just one step. This step is a time sensitive step that is needed to move the process forward. Certainly in both houses of the legislature the rules will be discussed and the public will again have the opportunity to provide input at that time.

**BOARD ACTION:** A motion was made by Attorney General Lance to adopt the rules. Secretary of State Cenarrusa seconded the motion. The motion carried on a vote of 5-0.

<ul style="list-style-type: none"><li>• ITEM DISCUSSED NOT ON THE AGENDA</li></ul>
--

Attorney General Lance commented that he met with the counsel and representatives of the WestRock project. As instructed, Valley County has met and discussed their concerns about WestRock. Attorney General Lance remarked that the board needs to decide where it is headed in terms of dealing with WestRock's request for a lease of state lands.

Director Wiggins stated that the board has in its possession all of the materials that have been developed in relation to this proposal, including the report of the review committee and the special report commissioned for a real estate analysis. The department proposes to come to the board in September with a briefing, some of which may be in Executive Session.

Prior to that, the department needs to know if the board members have had adequate time to review the documents and if there are additional pieces of information that the board would like the department to collect. If possible, a special Land Board meeting date can be arranged at the board's convenience to allow the board to consider this proposal in detail and then move forward.

Attorney General Lance asked if the department has a lease payment proposal from the developers. Assistant Director Biladeau stated WestRock made a proposal wherein they offered \$100,000 a year for the first five years. That offer was based on less than a long-term lease. The department has the authority to issue leases for ten years or less. The department has not negotiated with WestRock on a lease rate.

Attorney General Lance remarked if the board is going to consider a proposal, it needs to know the dollars amounts. As landlords the bottom line is how much money will be paid for the rental property. The board should have very definite proposals to discuss and consider when the matter is brought forward at a meeting.

- ❑ A motion was made by Controller Williams to resolve into Executive Session at 10:40 a.m. Secretary of State Cenarrusa seconded the motion. The motion carried on a vote of 5-0.

- **EXECUTIVE SESSION**

- A. To Consider and Advise Its Legal Representatives in Pending Litigation or Where There is a General Public Awareness of Probable Litigation** – *Presented by Steve*

- Schuster, Deputy Attorney General, Idaho Department of Lands*

- B. To Consider Personnel Matters, Idaho Code § 67-2345(1)(b)** – *Presented by Winston*

- Wiggins, Director*

- ❑ A motion was made by Attorney General Lance to resolve back into Regular Session. Secretary of State Cenarrusa seconded the motion. The motion carried on a vote of 5-0. No actions were taken by the board during the Executive Session.

There being no further business to come before the board, the meeting adjourned at 11:15 a.m.

IDAHO STATE BOARD OF LAND COMMISSIONERS

\_\_\_\_\_  
/s/

President, State Board of Land Commissioners and  
Governor of the State of Idaho

\_\_\_\_\_  
/s/

Pete T. Cenarrusa  
Secretary of State

\_\_\_\_\_  
/s/

Winston A Wiggins  
Director

**The above-listed final minutes were approved by the State Board of Land Commissioners at the September 11, 2001 regular Land Board meeting.**